

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

AMBER LYNN, an infant under the age of 18,
by her m/n/g JULIE B. and JULIE B. individually,

Plaintiffs,

v.

03-CV-1333

ST. ANNE INSTITUTE, et al.,

Defendants.

THOMAS J. McAVOY
Senior United States District Judge

DECISION and ORDER

On December 15, 2005, the Greene County Defendants timely filed a motion for summary judgment seeking dismissal of Plaintiffs' Complaint. On January 10, 2006, the St. Anne Defendants filed a "cross-motion" for summary judgment also seeking dismissal of Plaintiff's Complaint. Plaintiffs object to the St. Anne's motion on the ground that it is not really a cross-motion, but an attempt by the St. Anne Defendants to circumvent the dispositive motion filing deadline.

The Court agrees with Plaintiffs that the St. Anne Defendants' motion is not properly styled as a cross-motion. The local rules of this District contemplate a cross-motion as one made by a party opposing a previously made motion. It is for this reason that the local rules require that "the cross-motion brief must be joined with the opposition brief." N.D.N.Y.L.R. 7.1(c). Thus, the St. Anne Defendants' motion is an untimely filed motion for summary judgment pursuant to N.D.N.Y.L.R. 7.1(b)(1). Nevertheless, the Court will accept

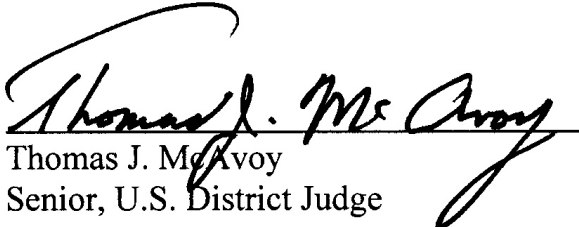
the motion and will afford Plaintiffs **until February 17, 2005 to file opposition papers. No reply papers will be permitted.**

A dispute also has arisen concerning expert disclosure. The St. Anne Defendants seek to preclude Plaintiffs' expert on the ground that Plaintiffs failed to timely disclose their expert. Magistrate Judge Treece denied the parties' joint request to extend various deadlines in this case. Nonetheless, Judge Treece explicitly left open the possibility that the parties could agree amongst themselves to continue with expert discovery. Indeed, it appears that the parties did agreed to continue with expert discovery after the deadlines set forth by the Court. Accordingly, the St. Anne Defendants' motion to preclude Plaintiff's expert is DENIED and neither the St. Anne Defendants' nor Plaintiff's expert shall be precluded on the ground that the experts were not timely disclosed or deposed.

Accordingly, the St. Anne Defendants motion for summary judgment [dkt. no. 101] is accepted. Plaintiffs shall have until February 17, 2006 to file opposition papers. No reply shall be permitted. The motion to preclude Plaintiffs' expert [dkt. no.106] is DENIED.

IT IS SO ORDERED.

Dated: February 7, 2006


Thomas J. McAvoy
Senior, U.S. District Judge